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No. 361

In the Supreme Court of the United States

OCTOBER TERM, 1958

JACK A. LUSTMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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On July 30, 1958, the Court of Appeals affirmed the conviction [1] of petitioner for mail fraud in violation of 18 U. S. C. 1341, holding that the District Court had properly denied petitioner's motions to dismiss the indictment and to arrest judgment on the ground that he had been denied a speedy trial (Pet. 8–15). A petition for a writ of certiorari was filed the 44th day thereafter, on September 12, 1958. There being no record of an application for, or granting of, an extension of the 30-day period of time in which the petition was required to be filed, it was therefore filed out of time.

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[1] Petitioner was fined $750, and was given three-year sentences to run concurrently on each of four counts. The sentences were suspended, and petitioner was placed on probation for eighteen months.

Rule 22 (2) of the Rules of the Supreme Court; Rule 37 (b) of the Federal Rules of Criminal Procedure.

Petitioner's argument that Rule 37 (b) (2) of the Federal Rules of Criminal Procedure[2] should be construed as permitting the 30-day period here to run from what he refers to as the date of the entry of judgment of affirmance in the District Court is without merit. Obviously it is the judgment of the Court of Appeals that petitioner is here seeking to have reviewed. Rule 22 (2) of the Rules of the Supreme Court. See also *The Cuba Railroad Company* v. *United States of America*, No. 299, this Term.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

OCTOBER 1958.

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[2] Petitioner relies on Rule 37 (b) (2), as amended at the October Term, 1948. The present rule, as amended at the October Term, 1953, which is applicable here, provides:

"(b) *Taking Appeal to the Supreme Court.*—An appeal to the Supreme Court when authorized by statute shall be taken in the manner and within the time prescribed by its rules."